

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(C.G.)

CRIMINAL APPEAL NO. 883 /2005

APPELLANT:
(IN JAIL)

Dinesh Giri Goshwami,
S/o Bhuwan Giri Goshwami,
Aged about 32 Years,
Occupation - Doctor,
R/o Village - Khurmuda,
P.S.- Patan , District Durg (C.G)

VERSUS

RESPONDENT:

State of Chhattisgarh,
Through P.S.- Patan,
District Durg (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE
CODE OF CRIMINAL PROCEDURE 1973.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.883/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Dinesh Giri Goswami

Vs.

State of Chhattisgarh

Post for orders 13.01.06

**Sd/-
Dilip Raosaheb Deshmukh
Judge**

12-01-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr. Appeal No.883/2005****Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Dinesh Giri Goswami

Vs.

State of Chhattisgarh

PRESENT: -

Shri Hemant Kesharwani, counsel for the accused-appellant.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

J U D G M E N T

(Delivered on 13-01-2006)

This appeal is directed against the judgment dated 02-12-2005 delivered by Shri Sanman Singh, Sessions Judge, Durg in Sessions Case No.35/2005 whereby the appellant was convicted under Section-450 & 376(1) of the I.P.C. and was sentenced to rigorous imprisonment for 3 years and fine of Rs.200/- under Section-450 of the I.P.C. and was sentenced to rigorous imprisonment for 7 years and fine of Rs.500/- under Section-376(1) of the I.P.C.

2. Briefly stated the prosecution story is that Suraj Bai PW-1 is the wife of the Bhagirathi PW-3. On dated 25-06-2004 at about 09.30 P.M. Bhagirathi PW-3 had gone towards the village for singing folk song and Suraj Bai PW-1 was sleeping inside her house after locking the outer door of the house from inside. At about 12 P.M., she woke up to

find that the appellant was holding her hands. She tried to shout but the appellant gagged her mouth and committed rape on her.

3. After committing rape when the appellant was about to leave, at that time Bhagirathi PW-3, the husband of the prosecutrix returned home. Suraj bai PW-1 shouted at that juncture. The appellant ran away and hid himself in the house of one Mansukh. Bhagirathi, Mansukh, Dinesh & other witnesses saw the appellant running away from the house of Mansukh. Bhagirathi PW-3 asked Suraj Bai, if she had called the appellant. Suraj Bai denied and told that the appellant had committed rape on her. F.I.R. Ex.P-1 was lodged by Suraj Bai on 26-06-2004 at 04.20 P.M. On medical examination Dr. Mamta Pandey, PW-5 found that Suraj Bai was pregnant and no definite opinion about the sexual intercourse with her could be given. After completion of investigation, the appellant was prosecuted for the offences punishable under Section-450 & 376(1) of the I.P.C. The accused-appellant abjured the guilt, pleaded false implication by Bhagirathi PW-3 who had threatened him, upon a quarrel on the date of occurrence. No evidence in defence was adduced. The prosecution examined as many as 5 witnesses. Relying upon the testimony of prosecutrix Suraj Bai PW-1, Bhagirathi PW-3 and the medical evidence of Dr. Mamta Pandey PW-5, learned trial Judge convicted & sentenced the accused-appellant as aforesaid.

4. Learned counsel for the accused-appellant has assailed the impugned judgment on the ground that the evidence led by the prosecution clearly shows that the accused-appellant was falsely implicated by Bhagirathi PW-3. It was argued that the evidence revealed that the entrance

door of the house was locked from inside and could not be opened from outside. Learned counsel for the appellant submitted that non examination of Mansukh, though cited by the prosecution, also creates a dent in the prosecution story. On the other hand, learned counsel for the accused-appellant has supported the impugned judgment of the trial Court.

5. Having considered rival submissions and after perusal of the record of Sessions Case No. 35/2005, this appeal deserves to be allowed. Suraj Bai PW-1 has admitted in para-1 that she had closed the outer door of the house from inside and no one could enter the house till the outer door was opened from inside. This also finds corroboration from the testimony of Patwari Kamlesh Kumar Verma PW-2 in para-3. It is, therefore, impossible that the accused appellant could have forcibly entered the house of Suraj Bai late at night at 12 P.M. for committing rape on her.
6. Suraj Bai is a married lady and was pregnant at the time of occurrence according to Dr. Mamta Pandey, PW-5. The testimony of Suraj Bai PW-1 also shows that her daughter Jageshwari was also sleeping with her. Dr. Mamta Pandey, PW-5 has deposed that on examination, no definite opinion about sexual intercourse with Suraj Bai could be given. Suraj Bai PW-1 has in para-10 admitted that on the date of occurrence at about 09-10 P.M., her father-in-law had mediated in a quarrel between her husband and the accused-appellant whereupon her husband had said that he would lodge a report against the accused-appellant. It seems highly improbable that a pregnant Suraj Bai with her daughter at home would have called the appellant when few hours prior at night

the appellant had a quarrel with her husband. In para-9, she admitted that it takes about 20 minutes to reach the Police Station on a motorcycle and that they owned 3 motorcycles and a tractor. F.I.R. Ex.P-1 was lodged on the next day at 4.20 P.M. There is no satisfactory explanation for such delay in lodging the F.I.R. in the abovementioned facts and circumstances of the case.

7. The testimony of Suraj Bai PW-1 in para-11 clearly shows that she started shouting after her husband arrived. She further stated that her husband started beating the appellant with a wooden stick. Bhagirathi PW-3 has stated that no sooner he entered the house, the accused-appellant ran away and hid himself in the house of Mansukh. Mansukh was cited by the prosecution as a witness and was present in the Court on 24-08-2005, but no reason was assigned by the prosecution for non-examination of Mansukh who was given up. This also creates a serious dent in the prosecution story.
8. Suraj Bai PW-1 in para-14 has stated that she struggled with the accused-appellant during the sexual intercourse, as a result of which she suffered injuries on her back as well as on her thighs. However, the testimony of Dr. Mamta Pandey, PW-5 clearly negatives the above statement which fails to inspire confidence. It is also pertinent to note here that Bhagirathi PW-3 has nowhere stated that Suraj Bai PW-1 had shouted at the time of occurrence which contradicts the testimony of Suraj Bai PW-1. In para-15 Suraj Bai PW-1 has stated that immediately on arrival her husband Bhagirathi PW-3, had asked, if she had called the accused. This also finds corroboration by Bhagirathi in para-4. Since, the outer door of the house was locked by Suraj Bai from inside, it

cannot be ruled out that the sexual intercourse, if any, was with the consent of Suraj Bai. It also cannot be ruled out that the accused-appellant has been falsely implicated due to a quarrel with Bhagirathi PW-3 sometimes before the occurrence, during which Bhagirathi had threatened to lodge a report against the accused-appellant.

9. Having considered the evidence led by the prosecution in its entirety in the abovementioned facts and circumstances of the case, I am of the considered opinion that the prosecution has failed to establish the charges under Section-450 & 376(1) of the I.P.C. against the accused-appellant. The appeal is allowed. Conviction of the accused-appellant under Section-450 & 376(1) of the I.P.C. and the sentences awarded thereunder are set aside. The appellant is acquitted of the charges under Section-450 & 376(1) of the I.P.C. and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the accused-appellant.

Tumane

Sd/-
Dilip Raosaheb Deshmukh
Judge